

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WENDELL W. PHILLIPS,

Plaintiff

Case:2:10-cv-14734
Judge: Hood, Denise Page
MJ: Morgan, Virginia M
Filed: 11-29-2010 At 04:43 PM
CMP WENDELL W. PHILLIPS V NATIONAL
BASKETBALL ASSOCIATION, ET AL (LG)

V

**NATIONAL BASKET BALL ASSOCIATION, and
DAKTRONICS, INC, and
EXECUTIVE VICE PRESIDENT FRANK KURTENBACH**

Defendants

Wendell W. Phillips
In Propria Persona
3225 Holiday Drive, Apt#6
Lansing, Michigan 48912
(517) 203-3056

Richard W. Buchanan
Executive Vice President
and General Counsel of NBA
NBA Olympic Towers
645 5th Avenue
New York, New York 10022
(212) 407-8000

Todd Gunn General Counsel
for Daktronics Inc.
331 32ND Avenue
Brookings , South Dakota 57006-5128
(605) 692-0200

COMPLAINT AND JURY DEMAND

Now comes Plaintiff, Mr. Wendell W. Phillips in Propria Persona complains as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Mr. Wendell W. Phillips (hereinafter, Plaintiff), at all time pertinent to this

action, is and was a resident of the City of Lansing, Michigan.

2. Defendant, NBA (hereinafter , Defendant), upon information and belief, at all times pertinent to this action, is a New York corporation engaged in the business of sports entertainment, and the promotions of NBA products, where its principal place of business being 645 5th Avenue City of New York, State of New York.
3. Defendant, Daktronics, Inc. (hereinafter, Defendant), upon information and belief, at all times pertinent to this action, is a South Dakota corporation engaged in the business of developing , selling , and video display systems, with its principal place of business being 331 32nd Avenue, City of Brookings, State of South Dakota.
4. This Court has jurisdiction over this action pertaining to a continuing violations theory in pursuant to Lanham Act, Sherman Anti Trust Act 15 U.S.C. § 1, and pursuant to § 43(43)(a) of Lanham Act 15 U.S.C. § 1125(a)(1)(A)(B)(3)(c) 17 U.S.C. § 301. Plaintiff and the Defendants and the matter involved in this controversy exceed the sum of \$75, 000, exclusive of interest and cost.
5. Venue is proper in the Federal Eastern District Court of Michigan, Southern Division, based upon the facts that Plaintiff met with the Vice President of Daktronics Mr. Frank Kurtenbach at a plant Air Gauge in Livonia, Michigan, where Plaintiff disclosed plans for the production of a lighted LED Basketball Hoop/Rim, LED Lighted Backboard, and the mounting of a 24 second shot clock above the backboard for Daktronics.

GENERAL ALLEGATIONS

6. That in or about 1990, Plaintiff invented the LED Lighted Backboard and LED Mounted 24 Second Shot Clock.

7. That Plaintiff's device included a backboard constructed of a transparent material and basket ball rim fixedly attached to said backboard , to which was affixed around the broader and around the said rim and a string of LED Lights attached to the rim.
8. That Plaintiff acquired Exclusive patent rights to enhance the LED Rim with a built in LED Lights in 1996. In that same year Plaintiff named his company The American Hoop Company that was registered with the Michigan Secretary of State.
9. That in March of 1997 Plaintiff contacted Frank Kurtenbach Vice President of Daktronics Inc. for a meeting in East, Lansing, Michigan to Discuss an interest in Plaintiffs' patent , and the other accessories such as LED Backboard, LED Mounted 24 Second Shot Clock, that comprised of drawings , specs , graphics designs, and marketing concepts.
10. In March 1997, Mr. Frank Kurtenbach , Vice President of Daktronics Corporation met with Mr. Wendell W. Phillips at Michigan State University during a State High School Boys Basket Ball Tournament.
11. That following the first initial meeting Frank Kurtenbach contacted Mr. Wendell W. Phillips for a second meeting that would be arranged in Livonia where the engineering firm Air Gauge who had worked with Plaintiff to develop the Basketball rim prototype scheduled a meeting in or around April 16, 1997 to finalize a deal and that Plaintiff would give full disclosure of all drawings of the LED Lighted Backboard, LED Mounted 24 Second Shot Clock ,technical specifications, marketing plans, and exclusive patent agreement, pertaining to the built in LED Basket Ball Rim. The deal was to be closed in the month of May of 1997 with stock options, manufacturing agreement, or complete buy out. Frank Kurtenbach asked Wendell Phillips how much life was left on patent, Plaintiff responded indicating that the LED Basket Ball Rim would expire in August of 2004.

- 12.** That on or around in May of 1997 after several calls made to Daktronics for Vice President Frank Kurtenbach there was never a returned call made to receive any consideration or if the deal was terminated. Defendant never made or mailed any formal notices that the LED Lighted Backboard or the LED Mounted 24 Second Shot Clock was a product that was a product of Daktronics or was in a joint venture with the NBA.
- 13.** That on or around in May of 1998 Plaintiff noticed that the NBA had a Mounted LED Lighted 24 second Shot Clock in an NBA Playoff game with the Los Angeles Lakers and the Utah Jazz.
- 14.** That on or around October 23, 2002 – 2003 season the NBA attaches a second phase of Plaintiff's invention by assembling the LED Lights to the rear boarders behind the backboard. This promotion was conducted over the internet to guarantee fans national and international of an upcoming product that promotes a lighting sensation for the fans and more control for regulation.
- 15.** That in or around the month of June 2003 Daktronics is promoting over the internet that is the owner of the copyright of the LED Lighted Backboard.
- 16.** That in August 2004 Plaintiff's exclusive patent has expired, and that Plaintiffs hard work has been exposed to the open market.
- 17.** That in or around October 2004 during a televised Detroit Piston game Plaintiff gets his first revelation that Daktronics is now claiming the LED 24 Seconded Mounted Shot Clock as their property from the logo brandishing the Name of Daktronics.
- 18.** That in or around December 2004 Plaintiff and his Preacher friend Charles Bicy called Daktronics and spoke with Frank. Frank was asked by Wendell over the phone if the

Mounted LED 24 Second shot clock was their property and Frank responded by saying yes "that is our property".

19. That in or around November 27, 2005 an employee of Daktronics is cited in the Salt Lake City Desert News paper stating that Daktronics and the NBA came up with LED clear view Mounted 24 Second Shot Clock from the side view of the corner was created for the fans "about two years ago. This statement is a calculation going back to 2003 shortly after a 6 year 1997 May statute of limitation would MCL 600.5813 would expire for Plaintiff to seek any damages with the application of a pendent state law.
20. Plaintiff contends that Daktronics alter ego the NBA shielded Daktronics from any litigation that would merit a timely cause of action in any judicial forum in a United States Court.

COUNT -I - CONTINUAL VIOLATION CONSPIRACY

TO VIOLATE ANTI - TRUSTS LAWS

Plaintiff incorporates by referencing the allegations contained in Paragraphs 1-20.

21. Plaintiff contends that Daktronics gave the NBA its drawings, sketches, technical specifications, marketing schemes, and exclusive patent agreement, and patent pointing out the life of patent with the intention of preventing Plaintiff from doing business with them or competing with them at any level, and sabotaging Plaintiffs business to where it

could not survive suffering severe economic damages. Plaintiff damages incurred as a result from the continual violation conspiracy is in the excess of \$ 1,000,000.

22. That Defendant's knew from the very inception that it intended to mislead Plaintiff by making promises to contract with Plaintiff for the production of LED Backboards, LED Lighted Mounted 24 Second Shot Clocks, and Phase III is the LED built in Basket Ball Hoop/Rim was all of an employment of a series artifices strategically orchestrated to establish a pattern to damage Plaintiff at any stage of the production.
23. That Defendant's made sure that statute of limitations would expire in most instances shortly thereafter to immediately employ a design, concept, drawing, and marketing scheme that depict the product of Plaintiff's total image for their own benefit.
24. That the Defendants' refusal to deal with Plaintiff created an unreasonable restraint on trade, and literally forced Plaintiff out of business which folded in July of 1999 one year after the NBA started Phase I of the Anti Trust Conspiracy Violations.

COUNT- II TRADE DRESS INFRINGEMENT

25. Plaintiff incorporates by referencing the allegations contained in Paragraphs 1-20.
26. That Defendants' knew that the information that Plaintiff provided was time sensitive , and that the information provided generates cost , and that the information provided allowed the Defendants' a free ride on the efforts of the Plaintiff.
27. Plaintiff contends that his trade dress has become famous from the concerted efforts promoting Anti Trust Conspiracy where Plaintiff is entitled for injunctive relief.
28. Plaintiff is damaged as a result form benefiting from Plaintiff's information trade secret

that gave the Defendants the edge on a competitive market which now has made product an international product. Plaintiff seeks damages that exceed \$100,000,000.

COUNT-III FALSE ADVERTISING

29. Plaintiff incorporates by referencing the allegations contained in Paragraphs 1-20.
29. That the Defendants misrepresented an inherent quality or characteristic of the product when it has failed to include the LED Lighted Hoop/Rim. This was another part of the orchestrated scheme to throw off any detection as to the originality of Plaintiff's product that would allow another would be infringer to file claim with the PTO to get my product registered and creating a new market from LED/Hoop/ Rim that would generate billions of dollars towards the economy.
30. Plaintiff seeks damages in the excess of \$ 100,000,000.

WEHEREFORE, Plaintiff, **WENDELL W. PHILLIPS** seeks injunctive relief from the damages caused by the Defendants. And that all LED Backboard the lights on all the NBA arenas and all 24 Second Mounted Shot Clocks and in NCAA arenas will cease under court order until a settlement or litigation has been resolved.

Plaintiff seeks (A) judgment in his favor against the NBA in the amount of \$100,000,000.

(B) Judgment against Daktronics , Inc for damages in the amount of

\$ 100,000,000.

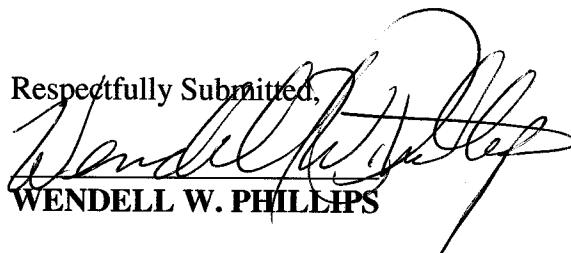
(C) Punitive damages of NBA \$1,000,000.

(D)Punitive damages of Daktronics \$ 1,000,000.

(E) Judgment awarding Plaintiff of all damages resulting to further relief as this court deem as proper.

JURY DEMAND

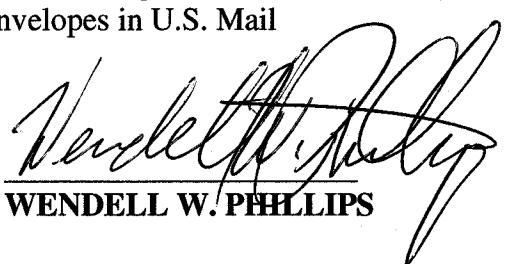
Respectfully Submitted,


WENDELL W. PHILLIPS

Dated: November 29, 2010

PROOF OF SERVICE

WENDELL W. PHILLIPS, being first duly sworn that he personally filed the Plaintiff's Original Complaint and Proof of Service with a Summons to appear in the Eastern District Court Southern Division of Michigan in Detroit, Wayne County, Michigan, Original in the Clerk of the Federal Eastern District Court of Michigan, with copies of the same Defendants Attorneys of General Counsel for the NBA Richard W. Buchanan and the General Counsel for Daktronics Todd Gunn, via first class mail by placing same in sealed envelopes, affixing appropriate first class postage fully thereon, and depositing said envelopes in U.S. Mail receptacle on November 29, 2010.



WENDELL W. PHILLIPS

JS 44 (Rev. 12/07)

CIVIL COVER SHEET County in which action arose *Dakota*

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Wendell W. Phillips
3228 Hickey Drive Apt 6
 (b) County of Residence of First Listed Plaintiff *Michigan*
 (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Lester W. Buchanan
N. B. Morgan
Frank Wertenbacher
 County of Residence of First Listed Defendant
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LAND CASE FORM

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II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. 1

Citi

 Plain
 Defendant

ETC DEF

Incorporated or Principal Place
of Business In This State

Citizen of Another State

Citizen or Subject of a
Foreign Country

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORT	FOREIGN RELATIONS	CIVIL RIGHTS	BANKRUPTCY	OTHER NECESSARY
<input type="checkbox"/> 110 Insurance	PERSONAL INJURY	PERSONAL INJURY	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal	<input checked="" type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	PROPERTY RIGHTS	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 460 Deportation	
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 480 Consumer Credit	
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 490 Cable/Sat TV	
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability		LABOR	<input type="checkbox"/> 510 Selective Service	
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 800 Securities/Commodities Exchange	
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 810 Customer Challenge	
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 820 HIA (1395ff)	
REAL PROPERTY			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 822 Black Lung (923)	
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 823 DIWC/DIWW (405(g))	
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	HABEAS CORPUS:	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 824 SSID Title XVI	
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General		<input type="checkbox"/> 825 RSI (405(g))	
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	IMMIGRATION	SOCIAL SECURITY	
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 831 IRS-Third Party	
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee	26 USC 7609	
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAXES	
				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
				<input type="checkbox"/> 871 IRS-Third Party	

410

V. ORIGIN

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7

Appeal to Dist Judge from Magistrate Judgment

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): ~

VI. CAUSE OF ACTION

Brief description of cause:

Sherman Anti Trust Violation

VII. REQUESTED IN COMPLAINT:

 CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

11/29/2010

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously dismissed?

Yes
 No

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

Yes
 No

If yes, give the following information:

Court: Petersen & Dusbury

Case No.: _____

Judge: _____

Notes :
